

**SECOND AMENDMENT TO
AGREEMENT FOR
FINANCIAL BACKGROUND INVESTIGATION SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
CONROY & ASSOCIATES, INC.**

This SECOND AMENDMENT TO AGREEMENT is entered into this ____ day of _____, 2012, by the CITY OF SAN JOSE ("CITY"), a municipal corporation, and CONROY & ASSOCIATES, INC., a California corporation (hereinafter "CONSULTANT").

RECITALS

WHEREAS, on September 30, 2011, CITY and CONSULTANT entered into an agreement entitled "AGREEMENT FOR FINANCIAL BACKGROUND INVESTIGATION SERVICES BETWEEN THE CITY OF SAN JOSE AND CONROY & ASSOCIATES, INC." ("AGREEMENT"); and

WHEREAS, on June 27, 2012, CITY and CONSULTANT entered into a First Amendment to the AGREEMENT to expand the scope of services, and increase the amount of total compensation allowed; and

WHEREAS, CITY and CONSULTANT desire to further amend the amended AGREEMENT to expand the scope of services, exercise the first one-year option to extend the amended AGREEMENT, and increase the amount of maximum compensation allowed;

NOW, THEREFORE, the parties agree to further amend the amended AGREEMENT as follows:

SECTION 1. SECTION 2, "TERM OF AGREEMENT" is amended to read as follows:

- A. The initial term of this AGREEMENT shall be retroactive from October 1, 2011 and shall extend through September 30, 2012, inclusive ("Initial Term"), subject to the provisions of SECTION 11 of this AGREEMENT.
- B. CITY and CONSULTANT agree the term of this AGREEMENT shall be extended for the period of October 1, 2012 to September 30, 2013, which is the first option period described in Section 2.B of the original AGREEMENT, at the rates set forth in SECOND REVISED EXHIBIT D of this AGREEMENT.
- C. Upon mutual agreement between the CITY and CONSULTANT, the term of this AGREEMENT may be extended for one (1) additional one-year option period as follows at the rates set forth in SECOND REVISED EXHIBIT D of this AGREEMENT.
- D. To effectuate the second renewal period, both parties must execute a Notice of Exercise of Option to Renew Agreement, hereinafter ("NOTICE"), to be prepared by CITY, before the expiration of the renewal period as applicable. The City Manager or City Manager's designee is authorized to execute the NOTICE on behalf of the CITY provided that sufficient funds have been appropriated for such expense by the San José City Council. Full execution of the NOTICE by both parties is required before the renewal is effective.
- E. CITY's agreement to extend the term of this AGREEMENT is not a waiver of the "time is of the essence" provision in SECTION 3.

SECTION 2 SECTION 4, "COMPENSATION" is amended to read as follows:

"The maximum amount compensation payable under this AGREEMENT for the Initial Term, and, if exercised, all option periods shall not exceed Five Hundred Seventy Thousand Dollars (\$570,000.00). The rate and schedule of payment is set out in SECOND REVISED EXHIBIT D, entitled "COMPENSATION", which is attached hereto and incorporated herein."

SECTION 3. REVISED EXHIBIT A, "RECITALS," is amended to read as shown in SECOND REVISED EXHIBIT A, attached and incorporated into this Second Amendment.

SECTION 4. REVISED EXHIBIT B "SCOPE OF SERVICES" is amended to read as shown in SECOND REVISED EXHIBIT B attached and incorporated into this Second Amendment.

SECTION 5. REVISED EXHIBIT D "COMPENSATION" is amended to read as shown in SECOND REVISED EXHIBIT D attached and incorporated into this Second Amendment.

SECTION 6. All of the terms and conditions of the amended AGREEMENT not specifically modified by this Second Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation

CARL B. MITCHELL
Senior Deputy City Attorney

By _____
NORBERTO DUEÑAS
Deputy City Manager

"CONSULTANT"

CONROY & ASSOCIATES, INC. a
California corporation

By _____
MICHAEL R. CONROY
Chief Executive Officer
88 S. Third St., #167
San Jose CA 95115
(408) 210-0808

SECOND REVISED EXHIBIT A

RECITALS

WHEREAS, the CITY OF SAN JOSE ("CITY") desires to obtain financial background investigation services for CITY's Police Department's Division of Gaming Control; and

WHEREAS, CONROY & ASSOCIATES, INC. ("CONSULTANT") has the necessary professional expertise and skill to perform such services; and

WHEREAS, on September 30, 2011, the CITY and CONSULTANT entered into an agreement whereby CONSULTANT conducts financial background investigation services on individuals and business entities seeking gaming licenses in the City ("AGREEMENT"); and

WHEREAS, due to significant unanticipated delays in responding to requests for information and documentation from the Division of Gaming Control and the CONSULTANT, and due to the frequently incomplete responses to requests for information and documentation, CITY and CONSULTANT experienced significant unanticipated increases in the services required to conduct and complete the financial background investigations for the Garden City Landowner License applicants;

WHEREAS, significant unanticipated increases in services required from CONSULTANT required CITY and CONSULTANT to enter into a First Amendment to the AGREEMENT to increase the maximum amount of compensation allowed and to expand the scope of services; and

WHEREAS, CITY and CONSULTANT desire to further amend the amended AGREEMENT so that CONSULTANT may perform additional financial background investigations, including, but not limited to, Financial Background investigations of Third Party Provider of Proposition Player Services, as set out in the SECOND REVISED Exhibit B; and

WHEREAS, CITY and CONSULTANT also desire to further amend the amended AGREEMENT in order to increase the maximum compensation allowed and exercise the first one-year option period; and

WHEREAS, there were typographical errors in the original AGREEMENT, specifically the description of the "Entity Applicant," which should have read "Entity Applicant and each Entity associated with an Individual / Trust Applicant;"

NOW, THEREFORE, the purpose of this AGREEMENT is to retain CONROY & ASSOCIATES, INC. as CONSULTANT to CITY to perform those services specified in SECTION 1 of this AGREEMENT.

SECOND REVISED EXHIBIT B

SCOPE OF SERVICES

Under the direction of the CITY's Administrator of the Division of Gaming Control, CONSULTANT shall perform the following services:

1. Conduct Financial Background Investigations on Individual / Trust Applicants:
 - 1.1 Obtain bank statements and related documents, all federal and state tax returns from the applicant for five (5) years prior and examine these documents using criteria established by the CITY's Administrator.
 - 1.2 Obtain commercial and gaming related credit reports for the applicant and examine reports using criteria established by the CITY's Administrator.
 - 1.3 Obtain information from gaming companies and regulatory agencies and prepare analyses using criteria established by the CITY's Administrator.
 - 1.4 Obtain all other financial information including businesses and/or investments and evaluate and confirm balances using criteria established by the CITY's Administrator.
 - 1.5 Evaluate and confirm applicant's assets and liabilities using criteria established by the CITY's Administrator.
 - 1.6 Perform detailed source and use of funds analyses using criteria established by the CITY's Administrator.
 - 1.7 Obtain local, county and state criminal and civil information concerning the applicant over the past ten (10) years or since the age of eighteen (18), whichever is less, including the municipal court system, state court system, federal court system to include bankruptcy filings, and law enforcement sources.
 - 1.8 Confirm employment and obtain information relative to the character, integrity and reputation of the applicant, with each employer over the past ten (10) years.
 - 1.9 Obtain information from regulatory agencies with regard to the applicant's gaming license/work permit/registration.

- 1.10 Obtain and examine other information and prepare analyses using criteria established by the CITY's Administrator.
2. Conduct Financial Background Investigations for each Entity Applicant and each Entity associated with an Individual / Trust Applicant:
 - 2.1 Obtain any and all information relative to source of initial capitalization with respect to the start up of the Third Party Provider of Proposition Player Services business. Follow up and confirm all information relating to the source of capital to include a determination as to whether there is any beneficial owner to the Third Party Provider of Proposition Player Services business other than what has been reported by the applicant.
 - 2.2 Review articles of incorporation, partnership agreements, LLC or LLP submissions and all related and required quarterly and annual filings.
 - 2.3 Obtain information from the SEC, Secretary of State and other governmental agencies and prepare analyses using criteria established by the CITY's Administrator.
 - 2.4 Obtain and review credit reports from Dunn and Bradstreet, Standard and Poors, and other credit reporting agencies and prepare analyses using criteria established by the CITY's Administrator.
 - 2.5 Obtain information concerning the Entity Applicant and each Entity associated with an Individual / Trust Applicant (locally and anywhere the company does business in) from various governmental offices, including but not limited to, the recorders office; assessors office; city and/or county clerks offices; business and liquor licensing departments and the Better Business Bureau and prepare analyses using criteria established by the CITY's Administrator.
 - 2.6 Obtain civil lawsuits information, if any, brought against or on behalf of the Entity Applicant and each Entity associated with an Individual / Trust Applicant from the federal (including bankruptcy), state and local court systems. Prepare analyses using criteria established by the CITY's Administrator.
 - 2.7 Obtain and examine other information and prepare analyses using criteria established by the CITY's Administrator.

- 2.8 Obtain and examine internally or externally generated financial records, including but not limited to the general ledger, player books, daily income/loss summary (in total and by shift), daily and periodic chip redemption information, income statement, balance sheet, statement of cash flow, disbursements, receipts, accounts receivable/payable, tax returns, loans and lease agreements, etc., of the entity applicant for a minimum of five (5) years (or other period as required by the CITY's Administrator) and confirm directly with financial institutions. Prepare analyses using criteria established by the CITY's Administrator.
- 2.9 Prepare source and use of funds analyses and other analyses for a minimum of five (5) years (or other period as required by the CITY's Administrator) using criteria established by the CITY's Administrator.
- 2.10 Obtain and examine any and all disbursement/receipt information for a minimum of five (5) years (or other period as required by the CITY's Administrator) between the Third Party Provider of Proposition Player Services and the San José cardroom where the Third Party Provider of Proposition Player Services operates.
- 2.11 Review all correspondences to/from CPA firms, governmental agencies, stockholders, partners, managers of LLC, cardroom owners/representatives, etc. Prepare analyses using criteria established by the CITY's Administrator.
- 2.12 Review and examine other information deemed necessary by the CITY's Administrator in connection with the investigation.
- 2.13 Prepare a summary report for each Entity Applicant supported by a summary of findings according to specifications set by the CITY's Administrator.

All work performed by CONSULTANT pursuant to this AGREEMENT shall be to the satisfaction of the CITY's Chief of Police.

In addition to duties listed above, CONSULTANT will attend in-person meetings and/or telephone conferences held by City Manager's Office and Chief of Police's Office, communicate directly or indirectly with the applicants and third parties from whom information is requested, prepare various reports to include redaction of sensitive

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information, prepare spreadsheets to clarify workload, and answer e-mails and phone calls from City Manager's Office and Chief of Police's Office, and appear as a witness in any administrative licensing hearing if called upon to testify regarding the services performed under this AGREEMENT.

SECOND REVISED EXHIBIT D

COMPENSATION

The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT, for both the Initial Term and option periods if exercised, shall not exceed Five Hundred Seventy Thousand Dollars (\$570,000.00).

A. Initial Term and all Option Periods

For the Initial Term of October 1, 2011 through September 30, 2012, and for all subsequent option periods, the fees are as follows:

Hourly rate for Individual/Trust financial background investigation	\$115.00 per hour
Hourly rate for Entity Applicant and each Entity associated with an Individual / Trust Applicant financial background investigation	\$115.00 per hour